

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.323 OF 2004

Mahapalika Arogya Seva Karmachari
Sanghatana, Mumbai.

...Petitioner.

Vs.

Commissioner, Brihanmumbai
Mahanagarpalika, Mumbai & Ors.

...Respondents.

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Mr. P. Devdas for the Petitioner.

Mrs.A. R. Joshi for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

September 26, 2006.

P.C.

The Petitioner is before the Court in these proceedings under Article 226 of the Constitution to challenge an award of the Industrial Tribunal, dated 10th October 2003. The State Government had made a reference to adjudication upon a dispute raised by the workmen for permanency in the employment of the Municipal Corporation of 71 workmen. The India Population Project V was implemented by the Municipal Corporation for Greater Mumbai with financial assistance provided by the World

Bank between the period 1988 until 31st March 1996. The objects of the project were inter alia to reduce the growth rate of population by decreasing the birth rate and increasing the acceptance of family planning methods; to provide facilities for immunization to reduce infant mortality and the morbidity rate, and to improve the health status of the slum population. 180 Health Posts were established and there were 30 Post Partem Centres. For the implementation of the project, the Municipal Corporation also took the assistance of Private Voluntary Organizations (PVOs). The conditions of service of staff appointed by the PVOs were not governed by Municipal Service rules and regulations. The Municipal Corporation upon the sanction of the Competent Authority reimbursed the salary bills in respect of the staff engaged by the voluntary organizations. The Corporation discontinued the payment of grant-in-aid to the voluntary organizations on 3rd January 2003. The Industrial Tribunal noted in the course of its award that the agreements that were entered into between the Municipal Corporation and the voluntary organizations concerned, specifically mentioned that the staff that

was engaged would not be governed by Municipal rules and regulations. The voluntary organizations were required to appoint staff as approved by the Municipal Corporation on such grades and allowance that were approved by the World Bank. The voluntary organizations agreed to spend the amount required for running the health posts and to submit their certified statements of account to the Municipal Corporation for reimbursement.

2. The Tribunal held that appointment orders to the staff engaged by the PVOs were not issued by the Municipal Corporation, but by the organizations concerned and only approval had to be granted by the Municipal Corporation. One of the appointment orders that was issued to Shri D. S. Naik specifically embodied the condition that he was appointed by the Mumbai Balmata Sangopan as multi-purpose health worker; and that the appointment was likely to last upto October 1995 if not terminated earlier. The employee was informed that the appointment was of a temporary nature and would continue as long as the health post continued subject to his work being found to be satisfactory.

Upon the closing down of the health post, the employee would have no claim upon the Municipal Corporation. The Tribunal held that the admissions on the part of the witness of the claimants and the material on the record showed that the appointments were issued by voluntary organizations and not by the Municipal Corporation. Relying on judgments of the Supreme Court, the Industrial Tribunal held that the project under which grant-in-aid was being provided by the Municipal Corporation having come to an end, no case for the conferment of permanency was made out.

3. A perusal of the evidence of Shri Vinay Namdeo Gawde, who deposed on behalf of the Union, would show that the witness admitted that his appointment was made not by the Municipal Corporation, but by one of the voluntary organizations who was impleaded to the reference. Similarly, the witness accepted that payments of wages were issued by the Municipal Corporation to the voluntary organizations. Directions in regard to the work to be performed were issued to the full time Medical Officer of the voluntary organizations. The Corporation, the witness admitted,

had not taken any action against any of the workmen for their suspension, dismissal, discharge or termination from service. Though the witness initially stated that he would trace out his letter of appointment, he eventually set up the explanation that he was unable to trace a copy. Dr. G. K. Koparde, Deputy Executive Health Officer, who deposed on behalf of the Municipal Corporation, stated in the course of his examination that the staffing pattern of the health posts run by the Private Voluntary Organizations was different from the staffing pattern of the health posts run by the Municipal Corporation. The witness stated that the staff working in the health posts run by the Voluntary Organizations was working under the concerned PVO. The witness deposed that the salary bills submitted by the Voluntary Organizations were sanctioned by the Competent Authority and the cheque was subsequently handed over to the Organization by the Municipal Corporation. The witness stated that the workmen governed by the reference were not employees of the Municipal Corporation and that they were under the direct control and supervision of the Organization concerned. During the course of

the cross-examination, the witness accepted that the infrastructure facilities, medicines, equipment and sample drugs were provided by the Municipal Corporation and conditions of eligibility for recruitment of the concerned workmen such as qualification, experience and age were also laid down by the Municipal Corporation.

4. On the state of the record as it stands, the Industrial Tribunal was justified in coming to the conclusion that the Municipal Corporation cannot be ordered to grant permanency in service. The workmen concerned were appointed by the concerned Voluntary Organizations. The Municipal Corporation which was implementing the project with the assistance of the World Bank was required to provide conditions of eligibility in order to ensure that only persons who met the prescribed norms participated as health providers in the programme. The Municipal Corporation decided to discontinue the assistance to Private Voluntary Organizations on and after 1st October 2003. On behalf of the Petitioners an effort has been made to submit that in the present

case, the relationship of employer and employee was between the workmen and the Municipal Corporation. This is *ex-facie* belied by the admission made by the witness who deposed on behalf of the Petitioners that the letters of appointment were not issued by the Municipal Corporation, but by the Voluntary Organizations concerned. In a project such as the one which is the subject matter of the present case, a governmental Organization is entitled to scrutinize the credentials of those appointed by a Voluntary Organization. The absence of adequate credentials will reflect upon the health of the community which is intended to be protected by the project. None of the concerned workmen was appointed by the Municipal Corporation. The Municipal Corporation which is a public body, is governed by well established norms, including reservations in respect of posts under its control.

5. The Supreme Court has in its decision in **A.Umarani Vs. Registrar, Co-op. Societies**,¹ held that regularisation is not and cannot be made a mode of recruitment for any entity meeting the description of "State" within the meaning of Article 12 of the

¹ (2004) 7 SCC 112

Constitution or by any body or authority governed by a statute or Rules framed thereunder. The Supreme Court has held that permanency cannot be granted in public employment to employees whose services are ad-hoc in nature. The decision of **Umarani** was followed by the Constitution Bench in **Secretary, State of Karnataka vs. Umadevi**.² The Supreme Court held as follows:

“19. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the Court impose on the State a financial burden of this nature by insisting on regularisation or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counterproductive.”

The Supreme Court further held thus:

² (2006) 4 SCC 1

“Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.”

6. The award of the Tribunal cannot thus be faulted on both counts. Firstly, the Tribunal was justified in holding on the basis of the evidence that there was no relationship of employer and employee with the Municipal Corporation so as to warrant the grant of the relief of permanency. That apart, having regard to the law laid down by the Supreme Court, it was impermissible for the Tribunal to order permanency in service to employees who were appointed by Voluntary Organizations during the tenure of the

project. In these circumstances, the order of the Tribunal does not warrant any interference under Article 226 of the Constitution. The Petition is accordingly dismissed.

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